



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2005

Ms. Christina Hartmann
Assistant District Attorney
81st Judicial District
914 Main Street, Ste. 120
Jourdanton, Texas 78026

OR2005-05888

Dear Ms. Hartmann:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227478.

The Wilson County Sheriff's Department (the "department") received a request for a specified offense report. You claim that the requested information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report made of, for, or by the department. Thus, pursuant to section 552.022(a)(1), the department must release this information unless it is expressly confidential under other law or excepted from disclosure under section 552.108. Although the department claims that the completed report is excepted from disclosure under section 552.103 of the Government Code, we note that this exception is a discretionary exception to disclosure that does not constitute "other law" for the purposes of section 552.022.² Accordingly, the department may not withhold the submitted information under section 552.103 of the Government Code. However, section 552.022(a)(1) does allow that a completed report may be withheld under section 552.108. Gov't Code § 552.022(a)(1). Because the department also raises section 552.108 for this information, we will address your arguments.

Section 552.108(a)(2) excepts from disclosure information concerning a criminal investigation "that did not result in a conviction or deferred adjudication." *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this instance, you state that the submitted information relates to "an investigation that did not result in conviction or deferred adjudication[.]" However, you also state that the "records requested include an active file that is currently pending." Consequently, it is unclear from your statements whether the investigation has concluded in a result other than conviction or deferred adjudication or whether the investigation is pending. *See* Gov't Code § 552.108(a)(1) (applying only to information that if released would interfere with an ongoing criminal case). Thus, you have not adequately demonstrated the applicability of section 552.108(a)(2) and the submitted information may not be withheld on that basis.

We note, however, that a portion of the submitted information is subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a Texas

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the Texas license plate number we have marked under section 552.130.

In summary, the department must withhold the Texas license plate number we have marked under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/krl

Ref: ID# 227478

Enc. Submitted documents

c: Brian K. Murphy
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(w/o enclosures)